

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KATHARINE S. CAMPBELL,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 13-CV-00229-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 15 and 17). Plaintiff is represented by Rosemary B. Schurman. Defendant is represented by Diana Andsager. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.*, at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to  
13 several impairments recognized by the Commissioner to be so severe as to  
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§  
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe, or more  
16 severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity  
19 of the enumerated impairments, the Commissioner must pause to assess the  
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§  
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);  
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the  
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the  
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy.  
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
15 the Commissioner must also consider vocational factors such as the claimant's age,  
16 education and work experience. *Id.* If the claimant is capable of adjusting to other  
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other  
19 work, the analysis concludes with a finding that the claimant is disabled and is  
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.  
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
3 the analysis proceeds to step five, the burden shifts to the Commissioner to  
4 establish that (1) the claimant is capable of performing other work; and (2) such  
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§  
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 7 **ALJ’S FINDINGS**

8 Plaintiff filed applications for disability insurance benefits on July 15, 2010,  
9 and supplemental security income disability benefits on March 30, 2010, alleging  
10 an onset date of June 25, 2010. Tr. 180-186. Her claims were denied initially and  
11 on reconsideration. Tr. 91-100, 102-111, 119-120. Plaintiff appeared for a hearing  
12 before an Administrative Law Judge on May 3, 2012. Tr. 46-89, 121. The ALJ  
13 issued a decision on June 7, 2012, finding that Plaintiff was not disabled under the  
14 Act. Tr. 22-35.

15 At step one, the ALJ found that Plaintiff had not engaged in substantial  
16 gainful activity since June 25, 2010, the alleged onset date. Tr. 27. At step two,  
17 the ALJ found that Plaintiff had severe impairments, Tr. 27, but at step three, the  
18 ALJ found that these impairments did not meet or medically equal a listed  
19 impairment. Tr. 28-29. The ALJ then determined that Plaintiff had the residual  
20 functional capacity (“RFC”) to:

1 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b)  
2 except she can occasionally climb ramps and stairs, balance, stoop,  
3 kneel, crouch, and crawl. She can never climb ladders, ropes, or  
4 scaffolds. She should avoid concentrated exposure to extreme cold,  
5 vibrations, exposure to sunlight, and hazards (heights, machinery,  
etc.). She is able to understand and carry out simple, routine tasks. She  
can have only occasional interactions with the general public and/or  
coworkers. She can maintain concentration, persistence, and pace on  
simple repetitive tasks.

6 Tr. 29-33. At step four, the ALJ found that Plaintiff was unable to perform past  
7 relevant work as a data entry clerk, woodworking assembly supervisor, picture  
8 framer, administrative clerk, or cashier. Tr. 33. At step five the ALJ determined  
9 that upon considering the Plaintiff's age, education, work experience, and residual  
10 functional capacity, Plaintiff could perform the representative occupations of small  
11 parts assembler, table worker, and packer inspector, and that such jobs existed in  
12 significant numbers in the national economy. Tr. 34. Thus, the ALJ concluded  
13 that Plaintiff was not disabled and denied her claims. Tr. 35.

14 On July 19, 2012, Plaintiff requested review of the ALJ's decision by the  
15 Appeals Council. Tr. 21. The Appeals Council denied Plaintiff's request for  
16 review on April 18, 2013, making the ALJ's decision the Commissioner's final  
17 decision for purposes of judicial review. Tr. 1-6, 20 C.F.R. §§ 404.981, 416.1484,  
18 and 422.210.

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## ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying her disability insurance benefits and supplemental security income disability benefits under Title II and Title XVI of the Social Security Act. Plaintiff has identified two issues for review:

1. Whether the ALJ properly evaluated and weighed the medical opinions of Dr. Steven Gerber, Dr. John Arnold, and Dr. William Roth; and

2. Whether the ALJ failed to comply with SSR 96-8 when formulating Plaintiff's RFC.

## DISCUSSION

### **A. Opinions of Dr. John Arnold and Dr. William Roth**

Plaintiff contends the ALJ improperly rejected the opinions of treating physician, Dr. Roth and examining physician, Dr. Arnold, and gave improper weight to the opinions of medical expert Dr. Gerber. There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant's file] (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted) (brackets in original). Generally, a treating physician's opinion carries more weight than an examining physician's,



1 and an examining physician's opinion carries more weight than a reviewing  
2 physician's. *Id.* In addition, the regulations give more weight to opinions that are  
3 explained than to those that are not, and to the opinions of specialists concerning  
4 matters relating to their specialty over that of nonspecialists. *Id.* (citations  
5 omitted). A physician's opinion may be entitled to little if any weight, when it is  
6 an opinion on a matter not related to her or his area of specialization. *Id.* at 1203,  
7 n.2 (citation omitted).

8 A treating physician's opinions are entitled to substantial weight in social  
9 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
10 (9th Cir.2009). If a treating or examining physician's opinion is uncontradicted, an  
11 ALJ may reject it only by offering "clear and convincing reasons that are supported  
12 by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.  
13 2005). "If a treating or examining doctor's opinion is contradicted by another  
14 doctor's opinion, an ALJ may only reject it by providing specific and legitimate  
15 reasons that are supported by substantial evidence." *Id.* (citing *Lester v. Chater*, 81  
16 F.3d 821, 830-31 (9th Cir. 1995)). However, the ALJ need not accept a  
17 physician's opinion that is "brief, conclusory and inadequately supported by  
18 clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation omitted). An  
19 ALJ may also reject a treating physician's opinion which is "based to a large extent  
20 on a claimant's self-reports that have been properly discounted as incredible."

1 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (internal and quotation  
2 and citation omitted).

3 Plaintiff contends that the ALJ erred by rejecting the opinions of treating  
4 physician Dr. Roth and examining physician Dr. Arnold in favor of the opinions of  
5 medical expert Dr. Gerber. ECF No. 15 at 10-18. Because Dr. Roth and Dr.  
6 Arnold's opinions were contradicted, *see* Tr. 287-88, 319-20, 334, 337, the ALJ  
7 need only have given specific and legitimate reasons supported by substantial  
8 evidence to reject them. *Bayless*, 427 F.3d at 1216.

9 **Dr. Roth**

10 The ALJ gave specific and legitimate reasons for rejecting both Dr. Roth's  
11 opinions. First, the ALJ noted that Dr. Roth's opinion was based in large part upon  
12 Plaintiff's subjective complaints of pain. Tr. 32. The ALJ deemed Plaintiff's  
13 subjective pain complaints not fully credible, and Plaintiff has not challenged that  
14 finding on appeal. This was a valid basis for rejecting Dr. Roth's opinions.  
15 *Tommasetti*, 533 F.3d at 1041.

16 Second, the ALJ noted that Dr. Roth's assessments of Plaintiff's limitations  
17 on a "multiple impairment questionnaire" completed on October 20, 2010, were  
18 inconsistent with his own objective findings and with Plaintiff's commensurate  
19 reports. Tr. 32. This observation is supported by substantial evidence. Although  
20 the multiple impairment questionnaire indicates that Plaintiff could only

1 sit for up to one hour and stand/walk for up to one hour before getting  
2 up to move around, could occasionally lift and carry up to 10 pounds  
3 and frequently lift and carry less 0-5 pounds, has significant  
4 limitations in overheard repetitive reaching, would require  
5 unscheduled breaks every two hours in order to rest for 15 minutes  
6 prior to returning to work, and would be absent two to three times a  
7 month,

8 Tr. 304-17, his objective medical findings indicate that Plaintiff's physical  
9 symptoms were generally mild. *See* Tr. 278, 350, 354-55 (plaintiff reported she  
10 was "doing okay"; plaintiff stated her pain was "well controlled"; Dr. Roth noted  
11 "current pain relief make[s] a real difference" to plaintiff). These objective  
12 findings are consistent with the findings of Dr. Eric Mueller, Dr. Robert Rose, and  
13 Dr. William Shanks. *See* Tr. 287-88, 319-20, 334, 337. It also bears noting that  
14 Dr. Roth indicated on the multiple impairment questionnaire he was able to  
15 "completely relieve [Plaintiff's] pain with medication without unacceptable side  
16 effects." Tr. 307. The ALJ did not err in rejecting Dr. Roth's opinions.

17 **Dr. Arnold**

18 The ALJ afforded Dr. Arnold's assessment of Plaintiff's psychological  
19 limitations "little weight" on the grounds that (1) they were based in part upon  
20 Plaintiff's subjective complaints of pain, which the ALJ deemed not credible; (2)  
they were inconsistent with Plaintiff's activities of daily living; (3) they were  
internally inconsistent; and (4) they were not supported by objective findings. The  
ALJ erred in relying upon number three above because there is no inconsistency

1 between Dr. Arnold's findings that Plaintiff could "understand and follow simple  
2 verbal and written instructions [and] remember simple work-related procedures  
3 and locations," *see* Tr. 340 (which the ALJ misstated as an ability to "perform  
4 simple repetitive tasks," *see* Tr. 33), and that her "perceived pain [would] interfere  
5 with attention and concentration." Tr. 340. The ALJ also erred in relying upon  
6 number four above because Dr. Arnold's report indicates that he performed an  
7 MMPI-2-RF assessment and that the results were attached to the report. Tr. 342.  
8 The fact that the assessment was not attached to the copy of Dr. Arnold's report in  
9 the record is not a valid basis for disregarding his opinions. As Plaintiff correctly  
10 notes, the ALJ has a duty to attempt to acquire the missing attachment in this  
11 circumstance. *See Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996) (holding  
12 that an ALJ has an affirmative duty to "fully and fairly" develop the record).

13       Nevertheless, the above errors were harmless because the ALJ's reliance  
14 upon the first and second grounds is supported by substantial evidence. As noted  
15 above, Plaintiff has not challenged the ALJ's adverse credibility finding in these  
16 proceedings. The fact that Dr. Arnold partially relied on Plaintiff's subjective pain  
17 complaints in formulating his opinions is therefore a valid basis for affording them  
18 little weight. *Tommasetti*, 533 F.3d at 1041. Similarly, the fact that Plaintiff was  
19 capable of exercising regularly, cooking, cleaning, shopping and caring for several  
20 animals, *see* Tr. 28, 30-31, was a valid basis for discrediting Dr. Arnold's opinion

1 that Plaintiff would have difficulty persisting through a full work day. *See Morgan*  
2 *v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999). The ALJ’s  
3 treatment of Dr. Arnold’s opinions is supported by substantial evidence.

#### 4 **B. Challenge to ALJ’s RFC Finding**

5 Plaintiff argues the RFC does not appropriately reflect all of her physical  
6 and mental limitations. The Commissioner’s regulations require an ALJ to  
7 consider all of a claimant’s medically determinable impairments-both severe and  
8 non-severe-in fashioning an RFC. 20 C.F.R. §§ 404.1545(a)(2); 416.945(a)(2); *see*  
9 *also* SSR 96-8p (“In assessing RFC, the adjudicator must consider limitations and  
10 restrictions imposed by all of an individual’s impairments.”).

11 Plaintiff contends the ALJ’s RFC and corresponding hypothetical question  
12 to the vocational expert (“VE”) are legally deficient because the ALJ failed to  
13 include all of Plaintiff’s limitations. ECF No. 15 at 19. Substantial evidence in the  
14 record supports the ALJ’s findings. Although the ALJ found Plaintiff’s  
15 “concentration, persistence or pace is with moderate difficulties,” she continued on  
16 to note a lack of objective evidence to support Plaintiff’s alleged difficulties. Tr.  
17 28-29. Further, despite Plaintiff’s contention that the ALJ did not account for her  
18 own finding of moderate limitations in concentration, persistence or pace in the  
19  
20

1 RFC and in the hypothetical question presented to the VE, the ALJ in fact did.<sup>1</sup>

2 *See* Tr. 79-80. The ALJ properly considered Plaintiff's symptoms, limitations, and  
3 the objective and opinion evidence in her RFC assessment. *See* Tr. 280, 286-303,  
4 318-322, 335, 338, 351, 355-56.

5 Moreover, as noted above, the ALJ properly discounted Plaintiff's subjective  
6 reports of pain as not credible and therefore, was not required to account for the  
7 inconsistent limitations identified by Dr. Arnold regarding Plaintiff's pace,  
8 concentration, or persistence in the hypothetical. Thus, the ALJ did not error in  
9 assessing Plaintiff's RFC. Defendant is entitled to summary judgment.

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15 <sup>1</sup> Q: "Based on Dr. Arnold's [perspective to maintain concentration, persistence,  
16 and pace on the simple, routine, repetitive tasks]... would such individual be  
able to perform any of the claimant's past work?"

17 A: "I don't think so your honor."

18 Q: "Would there be other work in the national economy that such an individual  
could perform?"

19 A: "Based on my understand[ing] of the hypothetical I think the person that you  
20 described could do fairly broad range of sedentary and light unskilled work,  
your honor."

**IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**
  2. Defendant's Motion for Summary Judgment (ECF No. 17) is
- GRANTED.**

The District Court Executive is hereby directed to file this Order, enter **JUDGMENT** for Defendant, provide copies to counsel, and **CLOSE** the file.

**DATED** June 6, 2014.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge